

INDIANA DEPARTMENT OF STATE REVENUE

Revenue Ruling #2002-07ST

April 11, 2002

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ISSUE

Sales/Use Tax – Product sold and stored in Indiana and later shipped to another state

Authority: IC 6-2.5-2-1; IC 6-2.5-4-1; 45 IAC 2.2-5-53; 45 IAC 2.2-5-54

The taxpayer requests the Department to rule whether:

1. Collection of sales tax should occur on behalf of foreign states or Indiana for products that are stored in Taxpayer's Indiana warehouse prior to shipment to buyers in foreign states.

STATEMENT OF THE FACTS

Taxpayer produces graphics products for customers located in various states. These are primarily large-scale decals that are affixed to large trucks. The product is manufactured in Indiana and is either shipped via third party common carrier to the customer, shipped via third party common carrier to the customer and installed by outside contractors hired by Taxpayer, or transferred to Taxpayer's warehouse in Indiana to await future shipping (called "paid stock"). In each case the customer pays for the product and it is said to no longer belong to the Taxpayer. Taxpayer charges customers 10% "paid stock" fee for storage in its warehouse. Further, taxpayer charges customers a "shipping and handling" fee on all shipments. All shipping is arranged by the Taxpayer and, if requested, will ship by a specific carrier. In addition, if the product is damaged in Taxpayer's warehouse, then the Taxpayer's insurance carrier covers the loss. If the product is damaged in transit, the common carrier is responsible for the loss.

It has been the Taxpayer's position that if the product is transferred to the Taxpayer's warehouse and title passes at that point to the customer, the sale has taken place in Indiana and sales tax is due to Indiana. The state in which the product will ultimately be used is not determinate at this point, since the customers have locations all over the country.

Recently, other states have begun to challenge this treatment using hindsight and claim that Taxpayer should have charged their state's sales tax if the product ultimately ended up in their state. (Based on varying rules of nexus, Taxpayer has filing responsibilities in several states and

does charge those states' sales taxes where the product is shipped directly into that state after production.)

DISCUSSION

Whether collection of sales tax should occur on behalf of foreign states or Indiana for products that are stored in Taxpayer's Indiana warehouse prior to shipment to buyers in foreign states.

IC 6-2.5-2-1 provides in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC 6-2.5-4-1 defines a retail transaction as:

- (c) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he: . . .
 - (2) transfers that property to another person for consideration.

45 IAC 2.2-5-53 provides in relevant part:

- (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-3.
- (b) Gross receipts derived from transactions which constitute "retail transactions" which the state of Indiana is prohibited from taxing by the Constitution of the United States of America are exempt from gross retail tax. Under this regulation [45 IAC 2.2], this exemption is limited to gross receipts from transactions conducted in commerce between Indiana and other states of the United States, or between Indiana and foreign countries. Such sales commonly are referred to as "sales in interstate commerce" and Indiana is prohibited from taxing such sales by the United States Constitution.

IAC 2.2-5-54 provides in relevant part:

- b) Delivery to purchaser in a state other than Indiana. Sales of tangible personal property which are delivered to the purchaser in a state other than Indiana for use in a state other than Indiana are not subject to gross retail tax or use tax, provide the property is not intended to be subsequently used in Indiana.
- c) Delivery by common carriers. (1) Delivery to common carriers in Indiana for shipment to another state by common carrier shall be deemed delivery to a purchaser in a state other than Indiana for purposes of applying the gross retail tax or use tax.

In the instant case, the fact that legal title to the product may pass from the Taxpayer to its customer when the product is transferred to the Taxpayer's warehouse for shipment at a later date is not determinative. A transfer of taxable personal property necessary to execute a retail transaction, as provided by IC 6-2.5-4-1, does not, in all instances, require an initial transfer of legal title, but it does require, at the minimum, a "deemed" possession of tangible personal property by the purchaser. Therefore, when the Taxpayer warehouses the "paid stock" and subsequently ships the products by a third party common carrier to purchasers outside of Indiana, the transaction is not an Indiana retail transaction. The customer does not take possession of the product until the product is shipped out of state by the third party common carrier. According to the Indiana Administrative Code, specifically 45 IAC 2.2-5-54(c)(1), this is a transaction that is not subject to the Indiana sales tax.

RULING

The Department rules that the transactions described by the Taxpayer are not retail transactions for purposes of the Indiana sales tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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